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**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke  
Probation Against:

**DJUANA JANE FRANKS  
5901 69th Street  
Sacramento, CA 95824**

**Registered Nurse License No. 566530**

**RESPONDENT**

Case No. 2003-259

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about September 28, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Petition to Revoke Probation No. 2003-259 against Djuana Jane Franks (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about April 28, 2000, the Board of Registered Nursing (Board) issued Registered Nurse License No. 566530 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on April 30, 2012 and has not been renewed.

3. On or about September 28, 2012, Respondent was served by Certified and First Class Mail copies of the Petition to Revoke Probation No. 2003-259, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

5901 69th Street

Sacramento, CA 95824.

1           4.     Service of the Petition to Revoke Probation was effective as a matter of law under the  
2 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions  
3 Code section 124.

4           5.     On or about November 7, 2012, the certified mail documents were returned by U. S.  
5 Postal Service marked "Unclaimed".

6           6.     Business and Professions Code section 2764 states:

7                 The lapsing or suspension of a license by operation of law or by order or decision of  
8 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive  
9 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding  
10 against such license, or to render a decision suspending or revoking such license.

11          7.     Government Code section 11506 states, in pertinent part:

12                 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
13 notice of defense, and the notice shall be deemed a specific denial of all parts of the Petition to  
14 Revoke Probation not expressly admitted. Failure to file a notice of defense shall constitute a  
15 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a  
16 hearing.

17          8.     Respondent failed to file a Notice of Defense within 15 days after service of  
18 the Petition to Revoke Probation upon her, and therefore waived her right to a hearing on the  
19 merits of Petition to Revoke Probation No. 2003-259.

20          9.     California Government Code section 11520 states, in pertinent part:

21                 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
22 agency may take action based upon the respondent's express admissions or upon other evidence  
23 and affidavits may be used as evidence without any notice to respondent.

24          10.    Pursuant to its authority under Government Code section 11520, the Board after  
25 having reviewed the proof of service dated September 28, 2012, signed by Brent Farrand, finds  
26 Respondent is in default. The Board will take action without further hearing and, based on  
27 Petition to Revoke Probation No. 2003-259 and the documents contained in Default Decision  
28 Investigatory Evidence Packet in this matter which includes:

Exhibit 1: Pleadings offered for jurisdictional purposes; Petition to Revoke Probation No. 2003-259, Statement to Respondent, Notice of Defense (two blank copies), Request for Discovery and Discovery Statutes (Government Code sections 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail receipt or copy of returned mail envelopes;

Exhibit 2: License History Certification for Djuana Jane Franks, Registered Nurse License No. 566530;

Exhibit 3: Affidavit of Lisa Hall (Probation Monitor).

The Board finds that the charges and allegations in Petition to Revoke Probation No. 2003-259 are separately and severally true and correct by clear and convincing evidence.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Djuana Jane Franks has subjected her following license(s) to discipline:

a. Registered Nurse License No. 566530

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's license(s) based upon the following violations alleged in the Petition to Revoke Probation, which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Violation of Condition of Probation No. 2 - Comply with the Board's Probation Program

b. Violation of Condition of Probation No. 5 - Submit written reports

c. Violation of Condition of Probation No. 15 - Participation in treatment/rehabilitation program for chemical dependence

d. Violation of Condition of Probation No. 17 - Submit to tests and samples

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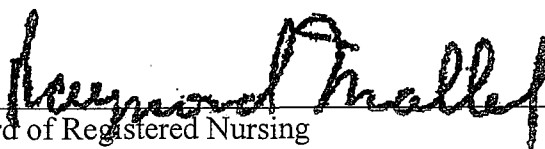
**ORDER**

IT IS SO ORDERED that Registered Nurse License No. 566530, heretofore issued to Respondent Djuana Jane Franks, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013

  
\_\_\_\_\_  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

Attachment:

Exhibit A: Petition to Revoke Probation No. 2003-259

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# Exhibit A

Petition to Revoke Probation No. 2003-259

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
Deputy Attorney General  
4 State Bar No. 193338  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5341  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against,

Case No. 2003-259

13 **DJUANA JANE FRANKS**  
14 **5901 69th Street**  
15 **Sacramento, CA 95824**

**PETITION TO REVOKE PROBATION**

16 **Registered Nurse License No. 566530**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Petition to Revoke  
20 Probation solely in her official capacity as the Executive Officer of the Board of Registered  
21 Nursing ("Board"), Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about April 28, 2000, the Board issued Registered Nurse License Number  
24 566530 to Djuana Jane Franks ("Respondent"). The registered nurse license was in effect at all  
25 times relevant to the charges brought herein. The license expired on April 30, 2012, and has not  
26 been renewed.

27 ///

3. In a disciplinary action entitled "In the Matter of Petition for Reinstatement Against Djuana Jane Franks," Case No. OAH 2009010629, the Board of Registered Nursing, issued a decision, effective May 8, 2009, in which Respondent's Registered Nurse License No. 566530 was issued and immediately revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (“Code”) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

# PETITION

6. Grounds exist for revoking the probation and reimposing the order of revocation of Respondent's Registered Nurse License No. 566530, Condition 12 of the Decision states:

If petitioner violates the conditions of her probation, the board after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of her license.

If during probation, an accusation or petition to revoke probation has been filed against the petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

7. Respondent has violated the Probation Program, as more particularly set forth in the following paragraphs:

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Submit to Tests and Samples)**

3 8. At all times after the effective date of Respondent's probation, Condition 17 stated:

4 Petitioner, at her expense, shall participate in a random, biological fluid  
5 testing or a drug screening program which the board approves. The length of time  
6 and frequency will be subject to approval by the board. Petitioner is responsible for  
7 keeping the board informed of her current telephone number at all times. Petitioner  
8 shall also ensure that messages may be left at the telephone number when she is not  
9 available and ensure that reports are submitted directly by the testing agency to the  
10 board, as directed. Any confirmed positive finding shall be reported immediately to  
11 the board by the program and the petitioner shall be considered in violation of  
12 probation.

13 In addition, petitioner, at any time during the period of probation, shall  
14 fully cooperate with the board or any of its representatives, and shall, when requested,  
15 submit to such tests and samples as the board or its representatives may require for  
16 the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled  
17 substances.

18 If petitioner has a positive drug screen for any substance not legally  
19 authorized and not reported to the coordinating physician, nurse practitioner, or  
20 physician assistant, and the board files a petition to revoke probation or an accusation,  
21 the board may suspend petitioner from practice pending the final decision on the  
22 petition to revoke probation or the accusation. This period of suspension will not  
23 apply to the reduction of this probationary time period.

24 If petitioner fails to participate in a random, biological fluid testing or  
25 drug screening program within the specified time frame, petitioner shall immediately  
26 cease practice and shall not resume practice until notified by the board. After taking  
27 into account documented evidence or mitigation, if the board files a petition to revoke  
28 probation or an accusation, the board may suspend petitioner from practice pending  
the final decision on the petition to revoke probation or the accusation. This period of  
suspension will not apply to the reduction of this probationary period.

9. Respondent's probation is subject to revocation because she failed to comply with  
Probation Condition 17, referenced above, as follows:

A. On the following dates, Respondent failed to call in or login with the Board's  
designated testing program, FirstLabs Inc., in order to determine whether or not she was selected  
to submit to testing: June 7, 2009; June 21, 2009; March 21, 2010; July 3, 2010; April 10, 2011;  
June 16, 2011; June 17, 2011; June 18, 2011; June 19, 2011; June 20, 2011; June 21, 2011; June  
22, 2011; June 23, 2011; June 24, 2011; June 25, 2011; June 26, 2011; June 27, 2011; June 28,  
2011; June 29, 2011; June 30, 2011; July 1, 2011; July 2, 2011; July 3, 2011; July 4, 2011; July 5,  
2011; July 6, 2011; July 7, 2011; July 8, 2011; July 9, 2011; July 10, 2011; July 11, 2011; July



1 12, 2011; July 13, 2011; July 14, 2011; July 15, 2011; July 16, 2011; July 17, 2011; July 18,  
2 2011; July 19, 2011; July 20, 2011; July 21, 2011; July 22, 2011; July 23, 2011; July 24, 2011;  
3 July 25, 2011; July 26, 2011; July 27, 2011; July 28, 2011; July 29, 2011; July 30, 2011; July 31,  
4 2011; August 1, 2011; August 2, 2011; August 3, 2011; August 4, 2011; August 5, 2011; August  
5 6, 2011; August 7, 2011; August 8, 2011; August 9, 2011; September 1, 2011; September 4,  
6 2011; September 5, 2011; September 7, 2011; and, September 14, 2011.

7 B. On the following dates, Respondent failed to submit a urine sample as required:  
8 June 15, 2011; June 22, 2011; June 28, 2011; July 8, 2011; July 29, 2011; August 4, 2011; August  
9 9, 2011; August 12, 2011; August 24, 2011; August 29, 2011; September 9, 2011; and,  
10 September 13, 2011.

11 C. Respondent completely ceased compliance with Probation Condition No. 17 as  
12 of September 16, 2011.

13 **SECOND CAUSE TO REVOKE PROBATION**

14 **(Failure to Submit Written Reports)**

15 10. At all times after the effective date of Respondent's probation, Condition 5 stated:

16 During the period of probation, petitioner shall submit or cause to be  
17 submitted such written reports/declarations and verification of actions under penalty  
18 of perjury as required by the board. These reports/declarations shall contain  
19 statements relative to petitioner's compliance with all terms and conditions of the  
20 board's probation program. Petitioner shall immediately execute all releases of  
information forms as may be required by the board or its representatives.

21 Petitioner shall provide a copy of this decision to the nursing regulatory  
22 agency in every state and territory in which she has a registered nurse license.

23 11. Respondent's probation is subject to revocation because she failed to comply with  
24 Probation Condition 5, referenced above, in that since June 30, 2011, Respondent failed to submit  
25 written reports/declarations and verifications of action under penalty of perjury as required by the  
26 Board.

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1 A. Respondent failed to maintain an active, current license with the Board in that her  
2 License expired on April 30, 2012, and has not been renewed; and,

3 B. Respondent failed to comply with the Board's Probation Program, as more particularly  
4 set forth in paragraphs 8 - 13, above.

5 **PRAYER**

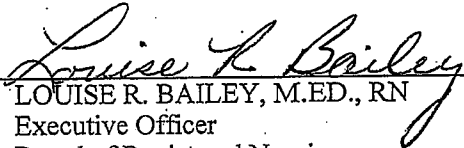
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
7 and that following the hearing, the Board of Registered Nursing issue a decision:

8 1. Revoking the probation that was granted by the Board of Registered Nursing in Case  
9 No. OAH 2009010629 and imposing the disciplinary order that was stayed thereby revoking  
10 Registered Nurse License No. 566530 issued to Djuana Jane Franks;

11 2. Revoking or suspending Registered Nurse License No. 566530, issued to Djuana Jane  
12 Franks; and,

13 3. Taking such other and further action as deemed necessary and proper.

14  
15 DATED: September 28, 2012

  
16 LOUISE R. BAILEY, M.ED., RN  
17 Executive Officer  
18 Board of Registered Nursing  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

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## **Exhibit A**

### **Decision and Order**

**Board of Registered Nursing Case No. OAH 2009010629**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement:

**DJUANA JANE FRANKS**

Registered Nurse License No. 566530

Petitioner.

OAH No. 2009010629

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on May 8, 2009.

IT IS SO ORDERED this 8<sup>th</sup> day of April 2009.

*Annmarie Phillips, MSN, RN, FNP-BC*

President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DJUANA JANE FRANKS,

Petitioner.

OAH No. 2009010629

**DECISION**

This matter was heard before a quorum of the Board of Registered Nursing in Emeryville, California, on February 19, 2009. Board members present and participating were LaFrancine Tate, President; Susanne Phillips, M.S.N., R.N., A.P.R.N.-B.C., F.N.P., Vice President; Nancy L. Beecham, R.N.C., B.S.; Andrea Dutton; and Dian Harrison. Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, presided.

Petitioner Djuana Jane Franks appeared and represented herself.

Deputy Attorney General Hannah Hirsch Rose represented the Office of the Attorney General.

The matter was submitted for decision on February 19, 2009.

**FACTUAL FINDINGS**

1. On April 28, 2000, the Board of Registered Nursing issued registered nurse license number 566530 to petitioner Djuana Jane Franks.

2. By decision effective May 24, 2004, in Case Number 2003-259, the board revoked respondent's license. Petitioner was disciplined on the basis of misdemeanor convictions in 2001 for violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance) and Penal Code section 273a (child endangerment), and her unlawful possession of methamphetamine. Petitioner was been placed on criminal probation for three years, which she violated, and the probationary period was extended to December 2004. Petitioner was ordered to pay the board \$500 in costs.

3. Petitioner suffered two more convictions in 2005 for violating Health and Safety Code section 11379, subdivision (a) (furnishing a controlled substance) and Penal Code section 272 (contributing to the delinquency of a minor). Imposition of sentence was suspended and petitioner was placed on probation for four years. Petitioner violated her probation two times, and was remanded to jail to serve 270 days with credit for time served. At the completion of her jail term on November 7, 2007, petitioner's criminal probation was terminated.

4. Petitioner filed with the board this petition for reinstatement dated October 20, 2008.

5. Petitioner has had a long history of drug and alcohol abuse. She also had a long period of sobriety, which lasted from 1992 to 2001. She relapsed in 2001 and again in 2003 at which time she entered a residential drug treatment program. That program was not successful, and she relapsed once again.

6. Petitioner took a hard look at herself while in custody and decided she needed to make better choices in her life. Following her release from jail on November 7, 2007, petitioner elected to reside in a clean and sober living community for eight months. She attended 12-step meetings on a daily basis and was subject to random testing. In a letter dated August 1, 2008, Program Director Manny Dias attested to petitioner's successful completion of the Clean and Sober program. He added: "She went above and beyond, working diligently for her recovery. She . . . continues to be an example for our women."

7. Petitioner has continued to regularly attend 12-step meetings of Narcotics Anonymous and Alcoholics Anonymous. She has a sponsor and she actively works the steps. She does not associate with anyone who uses drugs or alcohol. She has been clean and sober since August 1, 2007, or about one and one-half years.

8. Petitioner has been diagnosed with bi-polar disorder. She continues under the care of a psychiatrist for her condition.

9. Petitioner has established to the satisfaction of the board that she has sufficiently rehabilitated herself so that reinstatement of her registered nurse license on a lengthy probationary basis with strict terms and conditions is consistent with protection of the public.

#### LEGAL CONCLUSIONS

1. Petitioner bears the burden of demonstrating by clear and convincing evidence that she is entitled to reinstatement of licensure. (Bus. & Prof. Code, § 27602, subd. (b); Cal. Code Regs., tit. 16, § 1445.1, subd. (b).)

2. Petitioner has established to the satisfaction of the board that she has sufficiently rehabilitated herself so that reinstatement of her registered nurse license on a

lengthy probationary basis with strict terms and conditions is consistent with protection of the public.

### ORDER

The application of respondent Djuana Jane Franks for reinstatement of licensure is granted. A license shall be issued to petitioner. The license shall immediately be revoked, but the order of revocation shall be stayed and petitioner shall be placed on probation for a period of five (5) years on the following terms and conditions:

Each condition of probation is separate and distinct. If any condition of this order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected. Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS: Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by petitioner to the board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term, petitioner shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.
2. COMPLY WITH PROBATION PROGRAM: Petitioner shall fully comply with the terms and conditions of the probation program established by the board and cooperate with representatives of the board in its monitoring and investigation of her compliance. Petitioner shall inform the board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension.
3. REPORT IN PERSON: During the period of probation, petitioner shall appear in person at interviews/meetings as directed by the board or its designated representatives.
4. RESIDENCY, PRACTICE OR LICENSURE OUTSIDE OF STATE: Periods of residency or practice as a registered nurse outside of California shall not apply toward reduction of this probation time period. Petitioner's probation is tolled, if and when she resides outside of California. Petitioner must provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.



Petitioner shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the board if she applies for or obtains a new nursing license during the term of probation.

5. SUBMIT WRITTEN REPORTS: During the period of probation, petitioner shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury as required by the board. These reports/declarations shall contain statements relative to petitioner's compliance with all the terms and conditions of the board's probation program. Petitioner shall immediately execute all release of information forms as may be required by the board or its representatives.

PROVIDE DECISION: Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. FUNCTION AS A REGISTERED NURSE: Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with this condition, "engage in the practice of registered nursing" may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the board.

If petitioner has not complied with this condition during the probationary term but has presented sufficient documentation of her good faith efforts to comply, and if no other conditions have been violated, the board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS: Petitioner shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Petitioner shall cause to be submitted to the board all performance evaluations

and other employment-related reports as a registered nurse upon request of the board.

Petitioner shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care-related employment.

In addition to the above, petitioner shall notify the board in writing within 72 hours after she obtains any nursing or other health care related employment. Petitioner shall notify the board in writing within 72 hours after she is terminated or separated, regardless of cause, from any nursing, or other health-care related employment, with a full explanation of the circumstances surrounding the termination or separation.

8. SUPERVISION: Petitioner shall obtain prior approval from the board regarding her level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner's level of supervision and/or collaboration may include, but is not limited to the following:

- a. Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- b. Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.
- c. Minimum - The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
- d. Home Health Care - If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with him as required by the board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual

providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by petitioner with or without petitioner being present.

9. EMPLOYMENT LIMITATIONS: Petitioner shall not work for a nurse's registry, in any private duty position as a registered nurse, for a temporary nurse placement agency, or for an in-house nursing pool.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict petitioner from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a board approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If petitioner is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE A NURSING COURSE: Petitioner, at her own expense, shall enroll in and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Petitioner shall obtain prior approval from the board before enrolling in the course(s). Petitioner shall submit to the board the original transcripts or certificates of completion for the above-required course(s). The board shall return the original documents to petitioner after photocopying them for its records.

11. COST RECOVERY: Petitioner shall pay to the board its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3, associated with Case No. 2003-259, in the amount of \$500. Petitioner shall be

permitted to pay these costs in a payment plan approved by the board, with payments to be completed no later than three months prior to the end of the probation term.

12. VIOLATION OF PROBATION: If petitioner violates the conditions of her probation, the board, after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of her license.

If during the period of probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

13. LICENSE SURRENDER - During petitioner's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the board. The board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the board. A registered nurse whose license has been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- a. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- b. One year for a license surrendered for a mental or physical illness.

14. PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, petitioner, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the board before the assessment is performed, submit an assessment of the petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the board. If medically determined, a recommended treatment program will be instituted and followed by the petitioner, with the physician, nurse practitioner, or physician assistant providing written reports to the board on forms provided by the board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the board and petitioner by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the board is required until the board has notified petitioner that a medical determination permits him to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of this probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Petitioner, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the board. If petitioner has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the board shall consider petitioner in violation of probation.

Based on board recommendation, each week petitioner shall be required to attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

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16. ABSTAIN FROM PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment.

Petitioner shall have sent to the board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of any such substances.

The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

17. SUBMIT TO TESTS AND SAMPLES - Petitioner, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the board approves. The length of time and frequency will be subject to approval by the board. Petitioner is responsible for keeping the board informed of her current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. Any confirmed positive finding shall be reported immediately to the board by the program and the petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the board or any of its representatives, and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may suspend petitioner from practice pending the final decision on

the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the board. After taking into account documented evidence of mitigation, if the board files a petition to revoke probation or an accusation, the board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

18. MENTAL HEALTH EXAMINATION - Petitioner shall, within 45 days of the effective date of this decision, have a mental health examination, including psychological testing as appropriate, to determine her capability to perform the duties of a registered nurse. The examination must be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the board. All costs are the responsibility of the petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the petitioner.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the board and petitioner by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not resume practice until notified by the board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the board is required, until the board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of this probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. THERAPY OR COUNSELING PROGRAM - Petitioner, at her expense, shall participate in an ongoing counseling program until such time as the board

releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: April 8, 2009

*Lafrancine Tate*  
LAFRANCINE TATE  
President  
Board of Registered Nursing



BEFORE THE  
BOARD OF REGISTERED NURSING  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DJUANA J. FRANKS  
1550 Juliesse Avenue  
Sacramento, CA 95815

Respondent.

File No. 2003-259

OAH No. N2003090107

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on MAY 24, 2004.

IT IS SO ORDERED April 22, 2004.

Sandra L. Erickson

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DJUANA JANE FRANKS  
6929 Hazel Avenue  
Orangevale, CA 95662

Registered Nurse License No. 566530

Respondent.

Case No. 2003-259

OAH No. N2003090107

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on January 7, 2004.

Paul V. Bishop, Deputy Attorney General, represented the complainant.

Respondent was present and represented herself.

Evidence was received, the hearing was closed, and the record was held open until January 16, 2004 for the submission of additional evidence by the parties. An updated Certification of License History, dated January 7, 2004, was received via fax and U.S. mail and was appended to Complainant's Exhibit 2 in evidence. No additional documents were received from respondent. Thereupon, the matter was submitted on January 16, 2004.

**FACTUAL FINDINGS**

1. Complainant Ruth Ann Terry, R.N., M.P.H., filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California.

2. On April 28, 2000, the California Board of Registered Nursing ("the Board") issued registered nurse license number 566530 to Djuana Jane Franks ("respondent"). The license is in full force and effect and will expire on August 8, 2004, unless renewed.

3. "Methamphetamine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

4. On December 17, 2001, in Sacramento County Superior Court, Case No. 10M07309, respondent was convicted upon her plea of nolo contendere of violating Health and Safety Code section 11377(a), Possession of Controlled Substance, a misdemeanor. The circumstances underlying the conviction are that respondent was in a violent domestic relationship. On June 23, 2001, the police were called to respondent's home because of a domestic disturbance. While at the home, police found methamphetamine. The drugs belonged to respondent. Respondent was using drugs during the period of time prior to her arrest.

5. As set forth in Finding 4, respondent obtained and possessed methamphetamine without a prescription therefore and without any other legal authority to do so, in violation of Health and Safety Code section 11377(a).

6. The circumstances surrounding the conviction set forth in Finding 4 are substantially related to the qualifications, functions or duties of a registered nurse in that to a substantial degree it evidences her present or potential unfitness to practice in a manner consistent with the public health, safety, or welfare, within the meaning of Title 16, California Code of Regulations ("16 CCR") section 1444. Respondent's unlawful possession of a controlled substance on June 23, 2001 constituted unprofessional conduct within the meaning of Business and Professions Code section 2762(a).

7. As a consequence of the conviction set forth in Finding 4, imposition of sentence was suspended and respondent was placed on formal probation for three years subject to various terms and conditions. Respondent was ordered to serve 30 days in jail, stayed pending successful completion of a "Proposition 36" drug diversion; abstain from the use of drugs and alcohol; no association with known or reputed drug users; submit to warrantless searches; pay fines and fees of \$256 plus the costs of probation; and comply with other standard terms and conditions of probation. In February of 2002, respondent chose to withdraw from the drug diversion program because she was experiencing health problems that made urination difficult and "did not want to pee in front of a probation officer who was yelling" at her. Respondent's probation was modified to three years informal probation and she was ordered to serve 30 days in jail, with sheriff's work project recommended. Respondent crocheted hats and scarves for 14 days as part of the Toys for Tots program. Respondent has not paid any court-ordered fines or fees. Respondent admitted at hearing that she consumed alcohol in the summer of 2003 and used methamphetamine one time in August or September 2003, in an apparent violation of her criminal probation. Respondent remains on probation until December 17, 2004. [ ]

8. On December 18, 2001, in Sacramento County Superior Court, Case No. 01M07793, respondent was convicted by the court upon her plea of nolo contendere of violating Penal Code section 273a(a), Child Endangerment, a misdemeanor. The circumstances underlying the conviction are as follows. Respondent was incarcerated for two weeks following her arrest for possession of methamphetamine on June 23, 2001. As a result, she failed to pay her utility bill, which caused the utility company to shut off her electricity on July 9, 2001. Respondent took her children, along with some food and clothing, and left. Respondent attempted to drop her then-three-year-old son off with his father, and an argument ensued. The child's father called the police, who noted that the electricity was turned off when they came to respondent's residence.

9. The crime set forth in Finding 8 above is substantially related to the qualifications, functions or duties of a registered nurse in that to a substantial degree it evidences her potential unfitness to practice in a manner consistent with the public health, safety, or welfare, within the meaning of 16 CCR section 1444. Respondent's conduct on July 9, 2001 permitted her child, Luke M., of whom respondent had care and custody, to be placed in a situation in which his person and/or health was endangered, thereby showing disregard for the health and safety of another person.

10. As a consequence of the conviction set forth in Finding 8, imposition of sentence was suspended and respondent was placed on formal probation for three years, subject to various terms and conditions. Respondent was ordered to serve 45 days in county jail, with credit for time served of 35 days; pay fines and costs in an amount not established by the evidence; and comply with other standard terms and conditions. On September 19, 2002, respondent admitted violating the terms of her probation. Probation was revoked and reinstated under the original terms and conditions, plus an additional 20 days in county jail, with credit for time served of eight days. Respondent remains on probation until December 18, 2004.

11. Respondent has a long history of alcohol and drug addiction, both personally and in her family. Respondent has been dealing with drug addiction since the age of 13. Her father is a recovering alcoholic with 19 ½ years of sobriety. Respondent's brother is a drug user. Respondent was clean and sober for 8 ½ years, between November 17, 1992 and April of 2001. At that time she was in a physically abusive relationship and started using methamphetamine. While she intended to use "just for the weekend," her drug use escalated until her arrest in June of 2001. Respondent testified that, during her period of sobriety in the 1990s, she consistently attended Alcoholics Anonymous ("AA"); however, she said she never completed the "12 steps." As respondent became more involved in her nursing career, she was working 12 hour shifts three to five days per week and she stopped attending AA. In addition, she lost her AA sponsor, who moved away from the area. Respondent admitted at hearing that she "lost her focus" during this period.

12. Respondent has five children, ages 17, 15, 10, 5 and 1. Respondent's youngest child was born while respondent was living in a recovery home. After she completed that

program, she moved in with her mother, and commenced a six-month outpatient program. Respondent began drinking and using drugs in the summer of 2003. Respondent's mother suspected she had relapsed and respondent entered an in-patient drug treatment program on September 15, 2003. Respondent currently resides at The Effort Residential Program in Sacramento, an intensive behavioral modification program. Random urine testing performed by the program has been negative. Respondent hopes to move from the residential program to a two-year transitional housing program in the spring of 2004. Respondent is not currently employed. Respondent's mother is caring for respondent's three youngest children, in addition to three children of her own. Respondent's 17-year-old son resides with his father and respondent's 15-year-old child lives in a group home.

13. Respondent was diagnosed with bipolar disorder in 1987 or 1988. Respondent has been under the care of a psychiatrist, separate from her in-patient recovery program, for the past 1 ½ years. About eight months prior to the hearing, respondent stopped seeing the psychiatrist and stopped taking her medication for her bipolar disorder; this time period was just prior to the resumption of her alcohol and drug use. Respondent has resumed treatment with her psychiatrist, but no testimony or other evidence from the psychiatrist was presented at the hearing.

14. Respondent attended a three-month parenting class from March to May 2003, for which she received a certificate of completion. Respondent is currently enrolled in a 12-week parenting class, for which she has completed three weeks as of the date of hearing. She also has recently commenced a 16-week anger management class.

15. The costs of investigation and prosecution of this matter incurred by the Board were \$2,912 as of the date of hearing.

#### APPLICABLE STATUTES AND REGULATIONS

1. Business and Professions Code section 125.3 states in pertinent part as follows:

**~~§ 125.3. Direction to licentiate violating licensing act to pay costs of investigation and enforcement~~**

"(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

"(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

"(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

"(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

"(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

"(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

"(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

"..."

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2. Business and Professions Code section 490 states as follows:

**§ 490. Grounds for suspension or revocation**

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or

when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

3. Business and Professions Code section 2761 states in pertinent part as follows:

**§ 2761. Grounds for action**

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, ...

"...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

"..."

4. Business and Professions Code section 2762(a) states as follows:

**§ 2762. Drug-related transgressions**

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022."

5. Health and Safety Code section 11377(a) states as follows:

**§ 11377. Possession**

"(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of

subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison."

6. 16 CCR section 1444 states in pertinent part as follows:

**§ 1444. Substantial Relationship Criteria**

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. ..."

7. 16 CCR section 1444.5 states as follows:

**§ 1444.5. Disciplinary Guidelines**

"In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems."

8. 16 CCR section 1445(b) states as follows:

**§ 1445. Criteria for Rehabilitation**

"(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).



"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

9. Title 1, California Code of Regulations ("1 CCR") section 1042 states as follows:

**§ 1042. Agency Request for Costs of Investigation and Prosecution of the Case**

"(a) When an agency requests costs of investigation and prosecution of the case, it shall allege in the pleading a demand for the costs and the authorizing statute or regulation.

"(b) Unless the applicable cost recovery statute provides otherwise, evidence relating to cost recovery shall be submitted in the following manner:

"(1) Evidence relating to costs shall be submitted by Declaration executed by the agency or its designee.

"(2) A Declaration in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the ALJ can determine the costs incurred in connection with the matter and the reasonableness of the costs (for example, a general description of tasks performed, the time spent on each task, and the method of calculating the cost for the services).

"(3) Services provided by other persons shall be supported by a Declaration by that person providing each service which should contain sufficient information by which the ALJ can determine the costs incurred in the matter and the reasonableness of the costs (for example, a general description of the tasks performed, the time spent on each task and the hourly rate or other form of compensation). In lieu of the service provider's Declaration, the agency or its designee may attach to its Declaration copies of time and billing records upon which costs were incurred by the agency.

"(4) For other costs incurred by the agency, the bill, invoice, or other similar document reflecting the cost incurred by the agency should be attached to the Declaration submitted by the agency or its designee.

"(5) Where the agency seeks a cost award based on an estimate of actual costs incurred, the Declaration should explain the reason actual cost information is not available.

"(6) The ALJ may, at his or her discretion, permit any party to present testimony relevant to the imposition and reasonableness of costs.

"(c) At the Hearing, the evidence related to costs shall be presented by the agency before conclusion of its case in chief.

"(d) In the proposed decision the ALJ shall make factual findings and legal conclusions regarding the agency's request for costs. When a cost award is less than the amount requested or is denied altogether, the proposed decision shall state the reasons. When costs are awarded, the proposed decision shall include an order setting forth the amount to be paid."

### LEGAL CONCLUSIONS

1. Clear and convincing evidence established cause for discipline of respondent's license pursuant to Business and Professions Code sections 490 and 2761(f), by reason of Findings 3, 4, 6, 8 and 9, in that respondent was convicted of crimes that were substantially related to the qualifications, functions and duties of a registered nurse.

2. Clear and convincing evidence established cause for discipline of respondent's license pursuant to Business and Professions Code sections 2761(a) and 2762(a), by reason of Findings 3, 4 and 5, in that respondent obtained and possessed methamphetamine without a prescription therefore and without any other legal authority to do so, in violation of Health and Safety Code section 11377(a).

3. The Board has adopted criteria to evaluate the rehabilitation of a licensee who has a record of criminal convictions, in order to determine continued fitness for licensure. In this case, respondent has been convicted of serious criminal offenses. The crimes are relatively recent, and respondent remains on criminal probation as of the date of hearing. Respondent by her conduct has violated her criminal probation and, in one case, had her criminal probation revoked and reinstated. Respondent has not paid any of the fines or fees ordered by the court in connection with her criminal probations. Respondent has continued to experience problems with drugs and alcohol after her convictions. Respondent had only four months of sobriety as of the date of hearing and is currently residing in an in-patient treatment program.

4. Respondent is in an early stage of her most recent recovery effort, for which she is to be commended and encouraged. However, respondent has had recent relapses into substance abuse. She has been clean and sober for about four months, and she is still subject to urine drug screening. Insufficient time has elapsed to fully establish respondent's rehabilitation. Under all the facts and circumstances herein, it would be contrary to the public interest to permit respondent to retain her registered nurse license, with or without terms and conditions of probation.

5. Under Business and Professions Code section 125.3, the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 15, the costs of investigation and enforcement claimed by the Board herein are in the amount of \$2,912. However, *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, requires the consideration of the following factors in determining the amount of costs to be assessed:<sup>1</sup>

- The board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.
- The board must consider the licensee's subjective good faith belief in the merits of his or her position.
- [The board must consider] whether the licensee has raised a colorable challenge to the proposed discipline.
- Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation, the board must determine that the licensee will be financially able to make later payments.
- Finally, the board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

6. Taking into account the above factors, it appears on its face that the costs of the investigation and prosecution herein are excessive given the fact that this is essentially a criminal conviction matter. The basis for the cost request is a declaration reflecting 26 hours of attorney time for preparation of pleadings, investigation, and trial preparation, which would appear disproportionately large given the nature of the case. In addition, respondent is not currently employed and appears to be financially unable to make substantial payments.

Under all of the facts and circumstances, and balancing respondent's financial hardship against the Board's obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$500 against respondent is reasonable and appropriate.

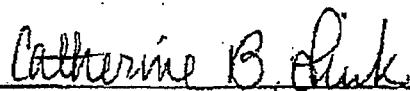
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<sup>1</sup> Although the *Zuckerman* case involved the interpretation of the Board of Chiropractic Examiner's cost recovery regulation, the California Supreme Court stated as follows: "Although regulation 317.5 applies only to the Board [of Chiropractic Examiners] and not to other disciplinary bodies, similar provisions apply to proceedings before most, if not all, professional disciplinary agencies in California. For example, an almost identical provision (Bus. & Prof. Code §125.3) permits all disciplinary boards within the jurisdiction of the California Department of Consumer Affairs (including most professional and vocational licensing boards) to recover prehearing investigation and enforcement costs. (Recently, the Legislature amended section 125.3 to include disciplinary hearings before the Board, but this amendment (Stats. 2001, ch. 728, § 1, p. 95) did not become effective until after the proceedings at issue here.)" *Zuckerman v. Board of Chiropractic Examiners*, *supra*, 29 Cal.4th at page 38.

ORDER

1. Registered nurse license number 566530, issued to respondent Djuana Jane Franks, is revoked pursuant to Legal Conclusions 1, 2, 3 and 4.
2. Respondent Djuana Jane Franks is ordered to pay to the California Board of Registered Nursing the reasonable costs of investigation and enforcement of this matter, in the amount of \$500, pursuant to Legal Conclusions 5 and 6.

Dated: 2-13-04

  
\_\_\_\_\_  
CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

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of the State of California  
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6 Attorneys for Complainant

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2003-259

13 **DJUANA JANE FRANKS**  
6929 Hazel Avenue  
14 Orangevale, CA 95662  
Registered Nurse License No. 566530

**ACCUSATION**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about April 28, 2000, the Board of Registered Nursing ("Board")  
22 issued Registered Nurse License Number 566530 to Djuana Jane Franks (hereinafter  
23 "Respondent"). The license will expire on August 8, 2003, unless renewed.

24 **STATUTORY PROVISIONS**

25 3. Section 2750 of the Business and Professions Code ("Code") provides, in  
26 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
27 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
28 2750) of the Nursing Practice Act.

1                   4.     Section 490 of the Code provides:

2                    "A board may suspend or revoke a license on the ground that the licensee  
3 has been convicted of a crime, if the crime is substantially related to the qualifications, functions,  
4 or duties of the business or profession for which the license was issued. A conviction within the  
5 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
6 contendere. Any action which a board is permitted to take following the establishment of a  
7 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
8 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
9 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
10 Penal Code."

11                   5.     Section 2761 of the Code provides:

12                    "The board may take disciplinary action against a certified or licensed  
13 nurse or deny an application for a certificate or license for any of the following:

14                         "(a) Unprofessional conduct . . ."

15                         "....."

16                         "(f) Conviction of a felony or of any offense substantially related  
17 to the qualifications, functions, and duties of a registered nurse, in which event the record of the  
18 conviction shall be conclusive evidence thereof."

19                   6.     Section 2762(a) of the Code provides:

20                    "*In addition to other acts constituting unprofessional conduct within the*  
21 *meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person*  
22 *licensed under this chapter to do any of the following:*

23                         "*Obtain or possess in violation of law, or prescribe, or except as*  
24 *directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or*  
25 *herself, or furnish or administer to another, any controlled substance as defined in Division 10*  
26 *(commencing with Section 11000) of the Health and Safety Code or any dangerous drug or*  
27 *dangerous device as defined in Section 4022."*

28     ///

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

9. Health and Safety Code section 11377(a) provides, in pertinent part, that except as authorized by law and as otherwise provided in subdivision (b) or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV; or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

10. California Code of Regulations, Title 16, section 1444, provides, in pertinent part, that a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences present or potential unfitness of a registered nurse to perform the functions authorized by his/her license in a manner consistent with the public health, safety, or welfare.

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

12. "Methamphetamine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

III

1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of Crime)

3 13. Respondent's registered nurse license is subject to discipline under  
4 sections 490 and section 2761(f) of the Code in that Respondent was convicted of the following  
5 substantially related crimes:

6 a. On or about December 17, 2001, Respondent was convicted by the  
7 court upon a plea of nolo contendere of violating Health and Safety Code section 11377(a)  
8 (possession of a controlled substance), in Sacramento County Superior Court, Case Number  
9 01M07309, entitled: People v. Djuana Jane Franks, et al. The circumstances surrounding the  
10 conviction are substantially related to the qualifications, functions or duties of a licensed  
11 registered nurse, as defined by Title 16, California Code of Regulations, section 1444, in that it  
12 evidences a present or potential unfitness on the part of Respondent to perform the functions  
13 authorized by that license in a manner consistent with the public health, safety, or welfare when,  
14 on or about June 23, 2001, Respondent unlawfully possessed a controlled substance, to wit:  
15 methamphetamine.

16 b. On or about December 18, 2001, Respondent was convicted by the  
17 court upon a plea of nolo contendere of violating Penal Code section 273A(a) (child  
18 endangerment) in Sacramento County Superior Court, Case Number 01M07793, entitled: People  
19 v. Djuana Jane Franks. The circumstances surrounding the conviction are substantially related to  
20 the qualifications, functions or duties of a licensed registered nurse, as defined by Title 16,  
21 California Code of Regulations, section 1444, in that it evidences a present or potential unfitness  
22 on the part of Respondent to perform the functions authorized by that license in a manner  
23 consistent with the public health, safety, or welfare when, on or about July 9, 2001, Respondent  
24 willfully and unlawfully, under circumstances likely to produce great bodily harm and death,  
25 injure, cause, and permitted a child, Luke M., to suffer and to be inflicted with unjustifiable  
26 physical pain and mental suffering, and, having the care and custody of said child, injured,

27 ///

28 ///



1 caused, and permitted the person and health of said child to be injured and did willfully cause  
2 and permit said child to be placed in such situation that his/her person and health was  
3 endangered.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Obtaining and Possessing a Controlled Substance)


6 14. Respondent's registered nurse license is subject to discipline under  
7 sections 2761(a) and 2762(a) of the Code in that, as set forth under paragraph 13a above,  
8 Respondent obtained and possessed methamphetamine without a prescription therefor and  
9 without any other legal authority to do so, in violation of Health and Safety Code section  
10 11377(a).

11 **PRAYER**

12 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
13 herein alleged, and that following the hearing the Board issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number 566530 issued  
15 to Djuana Jane Franks;  
16 2. Ordering Djuana Jane Franks to pay the reasonable costs incurred by the  
17 Board in the investigation and enforcement of this case pursuant to section 125.3 of the Code;  
18 3. Taking such other and further action as deemed necessary and proper.  
19

20 **DATED:** 5/12/03

21  
22  
23  
24   
RUTH ANN TERRY, M.P.H., R.N.  
25 Executive Officer  
26 Board of Registered Nursing  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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rjt 04/14/03